IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 21668 of 2007(D)

PETITIONER:

PEPSICO INDIA HOLDINGS PVT.LTD.,
WISE PARK, INDUSTRIAL DEVELOPMENT AREA,
KANJIKODE, PALAKKAD, REPRESENTED BY ITS MANAGER,
PLANT ACCOUNTING, MR.NEERAJ KHETAN.

BY ADV. SRI.A.K.JAYASANKAR NAMBIAR,
SRI.K.JOHN MATHAI,
SRI.P.BENNY THOMAS,
SRI.ANIL D. NAIR.

RESPONDENTS:

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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMERCIAL TAX OFFICER-III, II ND CIRCLE, PALAKKAD.**

3. **THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES ERNAKULAM.**

BY GOVT. PLEADER (TAXES) SRI. MATHEW GEORGE VADAKKEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.21668/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE KGST ASSESSMENT ORDER DTD. 27/03/2007 PASSED BY THE R.2. FOR THE YEAR 2002-03.

EXT.P.2: COPY OF THE CST ASSESSMENT ORDER DTD. 27/03/2007 PASSED BY THE R.2. FOR THE ASSESSMENT YEAR 2002-03.

EXT.P.3: COPY OF THE APPEAL WITHOUT ANNEXURES FILED BEFORE THE R.3. DTD. 26/04/2007 AGAINST THE ORDER OF THE R.2. (2002-03 KGST).

EXT.P.4: COPY OF THE APPEAL WITHOUT ANNEXURES FILED BEFORE THE R.3. DTD. 26/04/2007 AGAINST THE ORDER OF THE R.2. (2002-03 CST).

EXT.P.5: COPY OF THE STAY PETITION FILED BEFORE THE R.3. DTD. 26/04/2007 AGAINST THE ORDER OF THE R.2. (2002-03 KGST).

EXT.P.6: COPY OF THE STAY PETITION FILED BEFORE THE R.3. DTD. 26/04/2007 AGAINST THE ORDER OF THE R.2. (2002-03 CST).

EXT.P.7: COPY OF THE INTERIM ORDER PASSED BY THE HONOURABLE HIGH COURT IN W.P.(C). NO. 16688/07 DTD. 01/06/2007.

EXT.P.8: COPY OF THE INTERIM ORDER PASSED BY THE HONOURABLE HIGH COURT IN I.A. NO. 4258/2007 IN W.P.(C). NO. 3115/07 DTD. 30/03/2007.

EXT.P.9: COPY OF THE ORDER DTD. 20/06/2007 PASSED BY THE R.3. IN THE STAY APPLICATIONS PREFERRED BEFORE HIM IN I.A. NO. IA-103/07 IN S.T.A. 1926/07.

EXT.P.10: COPY OF THE ORDER DTD. 20/06/2007 PASSED BY THE R.3. IN THE STAY APPLICATIONS PREFERRED BEFORE HIM IN I.A. NO. IA-164/07 STA-1925/07

EXT.P.11: COPY OF THE STATEMENT SHOWING THE AVAILABILITY OF THE EXEMPTION FOR THE VARIOUS YEARS.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 21668 of 2007-D

Dated this the 16th day of July, 2007.

J U D G M E N T

The petitioner is a registered dealer under the Kerala General Sales Tax Act and Central Sales Tax Act. It is aggrieved by Exts.P1 and P2 assessment orders under those enactments for the year 2002-2003. The petitioner, aggrieved by those orders preferred Exts.P3 and P4 appeals before the third respondent along with Exts.P5 and P6 stay applications praying to stay recovery of the amounts due under the assessment orders. Those stay petitions were considered and disposed of by Exts.P9 and P10 orders. The main contention of the petitioner is that it has got exemption from payment of tax to the tune of about Rs.30 crores. The said exemption granted by the competent authority was not accepted by the Deputy Commissioner (General) and he declined to issue the consequential exemption order. The said proceedings is already under challenge before this Court in W.P.(C). 3115 of 2007. The petitioner also points out that this Court has granted stay in a similar matter, as evident from Ext.P8. But, by the impugned orders, the appellate authority directed to pay Rs.3 crores towards KGST under Ext.P1 and 50% of the balance demand under Ext.P2 towards CST. The petitioner prays, an order similar to Ext.P8 may be passed in this case also.

2. I heard the learned Government Pleader for the respondents also. In view of Ext.P8, I feel that a similar order can be passed in this case also, but subject to the condition that the petitioner furnishes security for the amount payable by it. The petitioner is mainly engaged in manufacturing and bottling of soft drinks. So, I feel that it could be directed to furnish security for payment in case ultimately the writ petition concerning exemption is decided against it. So, Exts.P9 and P10 are modified. Further recovery pursuant to Exts.P1 and P2 will be kept in abeyance provided the petitioner furnishes security to the second respondent for the amounts covered by those orders, to his satisfaction, within one month from today.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS